

lin, had paid the first installment of the purchase money, and had given bond, with good and sufficient surety, for the payment of the balance due and unpaid.

One of the heirs of Jonathan Evitts, deceased, was Louisa, the wife of Elijah A. Manship, and by the Auditor's report of the 5th of August, 1848, the sum of \$204 61, was assigned to the said Manship and wife, in right of the wife. This report, was ratified and confirmed on the 7th of March, 1849, and the money directed to be applied accordingly. It now appears, that, on or about the 24th of July, 1848, the wife died, leaving her husband surviving her, and the question submitted by the petition and answer, and agreement filed on the 14th inst., is, whether the husband is entitled to this money, or, whether a child, having been born after the marriage, though now dead, he shall only be paid an equivalent for his life interest, as tenant by the courtesy, and the residue, go to her heirs at law.

According to the decision of the Court of Appeals, in *Lead-anham vs. Nicholson*, 1 *Har. & Gill*, 267, the real estate, decreed to be sold in this case, was converted into personal, at the time of the death of the wife. The mutation from real to personal, the Court of Appeals say, is complete, when the sale is ratified by the court, and the purchaser has complied with the terms of it by paying the purchase money, if the sale is for cash, or by giving bonds if the sale is on credit. Here, the purchaser had complied with the terms of sale, in the lifetime of the wife, by paying the cash installment, and giving bond with approved surety for the deferred payment, and, consequently, the change from real to personal estate, was complete. The proportion, therefore, of the purchase money, which had been assigned to the husband and wife, must be regarded as a *chose in action*, and as such, survives to her husband.

L. W. POTTER for Petitioner.

E. R. SPRAGUE for Respondents.